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**FISCAL IMPACT STATEMENT**

**LS 6525**

**BILL NUMBER:** HB 1475

**NOTE PREPARED:** Dec 27, 2004

**BILL AMENDED:**

**SUBJECT:** Electronic Gaming.

**FIRST AUTHOR:** Rep. Brown C

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill authorizes electronic gaming devices in establishments licensed to sell alcoholic beverages for consumption on the licensed premises.

**Effective Date:** July 1, 2005.

**Explanation of State Expenditures:** Under the bill, the State Lottery Commission is given the power and duty to administer, regulate, and enforce distribution and operation of electronic gaming devices (EGDs) in alcoholic beverage retail establishments. The bill also requires the State Police to assist the Commission in conducting background investigations of licensees. Under the bill, all administrative costs would be defrayed by license application fees, license fees, and wagering tax revenue. The bill requires the Commission to reimburse the State Police for all costs relating to background investigations.

The bill creates an Establishment License permitting an alcoholic beverage retail establishment, except for a horse racetrack or OTB, to operate up to five EGDs. The Commission is required to conduct background investigations of each license applicant. The State Police Department is required to assist the Commission in conducting background investigations. The bill requires the investigative costs to be paid by license applicants and requires the Commission to reimburse the State Police for its investigative costs.

The bill also establishes the Electronic Gaming Fund and requires receipts from Establishment License fees and an Electronic Gaming Wagering Tax to be deposited in the Fund. Money in the fund does not revert to the state General Fund. The bill provides that money in the Fund is annually appropriated to the Commission to cover the cost of administering electronic gaming.

*Penalty Provisions:* The bill establishes a Class A misdemeanor for: (1) making false statements on an application for a license; (2) operating electronic gaming in a manner other than required by law; (3) permitting gambling by persons under 21; (4) aiding or inducing a person under 21 to enter a gambling area; and (5) accepting wagers at unlicensed establishments. The bill also establishes a Class D felony for: (1) transactions to influence the outcome of gambling games or to influence a Lottery Commission member; (2) cheating at a gambling game; (3) manufacturing or distributing materials or devices that violate the electronic gaming law; and (4) various acts to cheat at, alter the results of, or fraudulently win at electronic gaming.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$21,514 in FY 2004, ranging from a low of \$16,645 to a high of \$49,281. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

**Explanation of State Revenues:** *License Fees:* The bill creates an Establishment License that allows retail permit and club permit holders (including beer retailers, wine retailers, liquor retailers, restaurants, hotels, and social and fraternal clubs) to operate EGDs on their premises. The bill allows the State Lottery Commission to determine the fee for the Establishment License. However, the bill limits the annual fee to a maximum of \$1,000 per EGD. The number of alcoholic beverage retail permit holders that would potentially apply for an Establishment License to operate electronic gaming devices (EGDs), and the potential number of EGDs that may be licensed, is indeterminable. There are currently about 7,100 establishments that would qualify to operate EGDs. Assuming the license fee is set at \$1,000, it would generate \$1.0 M annually if 1,000 EGDs were licensed. If all of the qualified establishments each license one EGD, license revenue would equal approximately \$7.1 M annually. If all of the qualified establishments license the maximum number of devices authorized in this bill, permit revenue would equal approximately \$35.6 M per year.

*Wagering Tax:* The bill imposes a Wagering Tax equal to 40% of the adjusted gross wagering receipts (AGR) received by a license holder from EGD wagering. (AGR is the total receipts from EGD wagering minus the amount paid out in winnings to gamblers.) Based on average performance experienced in other states that allow EGDs to be operated in bars, taverns, lounges, and other restricted sites, daily AGR per EGD could potentially total about \$86, with the 40% wagering tax potentially generating about \$34 daily per EGD. Assuming this yield, the wagering tax could potentially generate about \$12.5 M annually from 1,000 EGDs. However, the extent to which the revenue yield would or would not grow proportionately with any increase in the number of EGDs operating is unknown. In addition, the estimate does not account for potential substitution of gaming on EGDs at bars and taverns for charity gaming, lottery sales, or riverboat gaming and the impact this could have on tax revenue from these activities.

*Electronic Gaming Fund:* The bill establishes the Electronic Gaming Fund consisting of revenue from the Electronic Gaming Wagering Tax and the Establishment License fees. The bill requires two-thirds of the revenue in the fund be distributed to the state General Fund. The remaining revenue in the fund must be distributed to the counties in which the revenue was generated. The bill requires the county distribution to be divided between the county, and cities and towns within the county, based on population.

*Other Revenue:* This bill may increase the number of EGDs sold, increasing Sales Tax revenue. Sales Tax revenue is deposited in the state General Fund, the Property Tax Replacement Fund, and three other dedicated

funds. In addition, an increase in the sale of EGDs will increase income tax revenue from any manufacturers and distributors located in Indiana. The use of EGDs by licensees could also increase their income, resulting in increased income tax revenue. Revenue from the Adjusted Gross Income (AGI) Tax is deposited in the state General Fund and the Property Tax Replacement Fund.

If allowing operation of EGDs in alcoholic beverage retail establishments increases sales, revenue from the Alcoholic Beverage Excise Tax may increase. Alcoholic Beverage Excise Tax revenue is deposited in the state General Fund, the Post War Construction Fund, the Alcohol and Tobacco Commission's Enforcement and Administration Fund, the Pension Relief Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund.

*Penalty Provisions:* The bill establishes a Class A misdemeanor and a Class D felony for various acts. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

*Background:* The number of alcoholic beverage retail permit holders that would potentially apply for an Establishment License to operate electronic gaming devices (EGDs) is indeterminable. The Lottery Commission estimated in a 1993 study that 10,000 to 15,000 EGDs were being operated illegally in the state at that time. Under the bill, roughly 7,100 establishments would qualify to operate EGDs. The table below illustrates the type and estimated number of qualified establishments, the maximum number of devices allowed at each type of establishment, and the maximum number of devices per type of establishment.

Qualified Establishments	Number of Establishments	Number of Devices Permitted	Maximum Number of Devices Per Establishment Type
Retail Permit Holders*	6,006	5	30,030
Club Permit Holders**	1,105	5	5,525
<b>TOTAL</b>	<b>7,111</b>		<b>35,555</b>
*Retail permit holders include beer retailers, wine retailers, liquor retailers, restaurants, and hotels. Civic Centers and Riverboat Casinos are excluded from the totals in this table. **Club permit holders include social and fraternal clubs.			

Currently, in six states (Louisiana, Montana, New Mexico, Oregon, South Dakota, and West Virginia) EGDs are operated in bars, taverns, lounges, and other sites where access by underage persons is restricted due to retail alcohol sales. New Mexico is somewhat more limited as EGDs are restricted to nonprofit social and fraternal organization facilities. EGD activities in these six states are summarized in the table below.

State	Total EGDs	Total Sites	EGDs Per Site	Annual AGR <sup>^</sup>	Daily AGR Per EGD
Louisiana*	14,296	2,798	5	\$566.0 M	\$108
Montana*	18,825	1,700	11	\$333.8 M	\$49
New Mexico*	530	54	10	\$10.6 M	\$55
Oregon**	9,470	1,973	5	\$496.9 M	\$144
S. Dakota**	8,247	1,415	6	\$212.3 M	\$71
W. Virginia**	5,329	1,000	5	\$172.7 M	\$89
*Based on FY 2004 financial data. **Based on FY 2003 financial data. <sup>^</sup> AGR equals total receipts from EGDs minus winnings paid out to gamblers.					

Since variation in EGD activities likely is, in part, the result of state differences in population, income, and competing forms of gaming, the table below provides information on these measures referenced to Indiana.

State	Population *	Median Household Income*	Other Gaming
Indiana	6.2 M	\$42,067	Lottery, riverboat casinos, pari-mutuel racing, charity gaming.
Louisiana	4.5 M	\$34,141	Lottery, riverboat & land-based casinos, tribal casinos, EGDs at racetracks, pari-mutuel racing, charity gaming.
Montana*	0.9 M	\$35,399	Lottery, tribal casinos, pari-mutuel racing.
New Mexico*	1.9 M	\$34,805	Lottery, tribal casinos, EGDs at racetracks, pari-mutuel racing, charity gaming.
Oregon**	3.6 M	\$40,319	Lottery, tribal casinos, pari-mutuel racing, charity gaming.
S. Dakota**	0.8 M	\$38,415	Lottery, land-based casinos, tribal casinos, pari-mutuel racing, charity gaming.
W. Virginia**	1.8 M	\$31,008	Lottery, EGDs at racetracks, pari-mutuel racing, charity gaming.
* 2003 levels - U. S. Census Bureau.			

**Explanation of Local Expenditures:** *Penalty Provisions:* The bill establishes a Class A misdemeanor and a Class D felony for various acts. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Local Distribution of Wagering Tax and License Fees:* The bill requires distributions from the state Electronic Gaming Fund to counties in which the revenue was generated. These

funds are to be divided between the county, and the cities and towns in the county, based on population (see above under *Explanation of State Revenues*).

*Penalty Provisions:* The bill establishes a Class A misdemeanor and a Class D felony for various acts. If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** State Lottery Commission; State Police; Treasurer of State; Department of Correction.

**Local Agencies Affected:** Cities, towns, and counties; Trial courts, local law enforcement agencies.

**Information Sources:** Don Oaky, Excise Industry Liaison, Alcoholic and Tobacco Commission, (317) 232-2463; Lottery Commission Report on Video Lottery, 1993; Financial and statistical reports from the Louisiana State Police, Video Gaming Division; the New Mexico Gaming Control Board; the Montana Department of Justice, Gambling Control Division; the Oregon State Lottery; the West Virginia Lottery; and the South Dakota Lottery; *States in Profile*, U. S. Census Bureau; Local Government Database.

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